

Sec. 274. Cooperation With States.

Cooperation with States a.[271] It is the purpose of this section—(1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this Act of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials; (2) to recognize the need, and establish programs for cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials; (3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials; (4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with respect to byproduct, source, and special nuclear materials, and the assumption thereof by the States; (5) to provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States; and (6) to recognize that, as the States improve their capabilities to regulate effectively such materials, additional legislation may be desirable.

Agreements with States b. Except as provided in subsection c., the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under chapters 6, 7, and 8, and section 161 of this Act, with respect to any one or more of the following materials within the State— (1) byproduct materials as defined in section 11e.(1);[272] (2) byproduct materials as defined in section 11e.(2);[273] (3) source materials; (4) special nuclear materials in quantities not sufficient to form a critical mass. During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

c. No agreement entered into pursuant to subsection b. shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of— (1) the construction and operation of any production or utilization facility or any uranium enrichment facility;[274] (2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility; (3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission; (4) the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission. The Commission shall also retain authority under any such agreement to make a determination that all applicable standards and requirements have been met prior to termination of a license for byproduct material, as defined in section 11e.(2).[275] **Conditions.** Notwithstanding any agreement between the Commission and any State pursuant to subsection b., the Commission is authorized by rule, regulation, or order to require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license issued by the Commission.

d. The Commission shall enter into an agreement under subsection b. of this section with any State if— (1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and (2) the Commission finds that the State program is in accordance with the requirements of subsection o. and in all other respects [276] compatible with the Commission's program for regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

Publication in F.R. e. (1) Before any agreement under subsection b. is signed by the Commission, the terms of the proposed agreement and of proposed exemptions pursuant to subsection f. shall be published once each week for four consecutive weeks in the Federal Register; and such opportunity for comment by interested persons on the proposed agreement and exemptions shall be allowed as the Commission determines by regulation or order to be appropriate. (2) Each proposed agreement shall include the proposed effective date of such proposed agreement or exemptions. The agreement and exemptions shall be published in the Federal Register within thirty days after signature by the Commission and the Governor.

Exemptions. Licensing Requirements f. The Commission is authorized and directed, by regulation or order, to grant such exemptions from the licensing requirements contained in chapters 6, 7, and 8, and from its regulations

applicable to licensees as the Commission finds necessary or appropriate to carry out any agreement entered into pursuant to subsection b. of this section.

g. The Commission is authorized and directed to cooperate with the States in the formulation of standards for protection against hazards of radiation to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible.

Federation Radiation Council h. There is hereby established a Federal Radiation Council, consisting of the Secretary of Health, Education, and Welfare, the Chairman of the Atomic Energy Commission, the Secretary of Defense, the Secretary of Commerce, the Secretary of Labor, or their designees, and such other members as shall be appointed by the President. The Council shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics. The Special Assistant to the President for Science and Technology, or his designee, is authorized to attend meetings, participate in the deliberations of, and to advise the Council. The Chairman of the Council shall be designated by the President, from time to time, from among the members of the Council. The Council shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States. The Council shall also perform such other functions as the President may assign to it by Executive order.

Inspections i. The Commission in carrying out its licensing and regulatory responsibilities under this Act is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any such State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection b.

Termination of Agreement j. (1)[277] The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection b. has become effective, or upon request of the Governor of such State, may terminate or suspend all or part of [278] its agreement with the State and reassert the licensing and regulatory authority vested in it under this Act, if the Commission finds that (1)[279] such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to insure compliance with the provisions of this section.[280] (2) The Commission, upon its own motion or upon request of the Governor of any State, may, after notifying the Governor, temporarily suspend all or part of its agreement with the State without notice or hearing if, in the judgment of the Commission: (A) an emergency situation exists with respect to any material covered by such an agreement creating danger which requires immediate action to protect the health or safety of persons either within or outside of the State, and (B) the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose. A temporary suspension under this paragraph shall remain in effect only for such time as the emergency situation exists and shall authorize the Commission to exercise its authority only to the extent necessary to contain or eliminate the danger.[281]

k. Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.

Notice of filing. l. With respect to each application for Commission license authorizing an activity as to which the Commission's authority is continued pursuant to subsection c., the Commission shall give prompt notice to the State or States in which the activity will be conducted of the filing of the license application; and shall afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application without requiring such representatives to take a position for or against the granting of the application.

m. No agreement entered into under subsection b., and no exemption granted pursuant to subsection f., shall affect the authority of the Commission under subsection 161b. or i. to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear

material. For purposes of subsection 161i., activities covered by exemptions granted pursuant to subsection f. shall be deemed to constitute activities authorized pursuant to this Act; and special nuclear material acquired by any person pursuant to such an exemption shall be deemed to have been acquired pursuant to section 53.

Definition. n. As used in this section, the term “State” means any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia. As used in this section, the term “agreement” includes any amendment to any agreement.[282]

o. In the licensing and regulation of byproduct material, as defined in section 11e. (2) of this Act, or of any activity which results in the production of byproduct material as so defined under an agreement entered into pursuant to subsection b., a State shall require— (1) compliance with the requirements of subsection b. of section 83 (respecting ownership of byproduct material and land), and (2) compliance with standards which shall be adopted by the State for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements and standards promulgated by the Commission and the Administrator of the Environmental Protection Agency pursuant to sections 83, 84, and 275, and (3) procedures which— (A) in the case of licenses, provide procedures under State law which include— (i) an opportunity, after public notice, for written comments and a public hearing, with a transcript, (ii) an opportunity for cross examination, and (iii) a written determination which is based upon findings included in such determination and upon the evidence presented during the public comment period and which is subject to judicial review; (B) in the case of rulemaking, provide an opportunity for public participation through written comments or a public hearing and provide for judicial review of the rule; (C) require for each license which has a significant impact on the human environment a written analysis (which shall be available to the public before the commencement of any such proceedings) of the impact of such license, including any activities conducted pursuant thereto, on the environment, which analysis shall include— (i) an assessment of the radiological and nonradiological impacts to the public health of the activities to be conducted pursuant to such license; (ii) an assessment of any impact on any waterway and groundwater resulting from such activities; (iii) consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to such license; and (iv) consideration of the long-term impacts, including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to such license, including the management of any byproduct material, as defined by section 11e.(2); and (D) prohibit any major construction activity with respect to such material prior to complying with the provisions of subparagraph (C). If any State under such agreement imposes upon any licensee any requirement for the payment of funds to such State for the reclamation or long-term maintenance and monitoring of such material, and if transfer to the United States of such material is required in accordance with section 83b. of this Act, such agreement shall be amended by the Commission to provide that such State shall transfer to the United States upon termination of the license issued to such licensee the total amount collected by such State from such licensee for such purpose. If such payments are required, they must be sufficient to ensure compliance with the standards established by the Commission pursuant to section 161x. of this Act. No State shall be required under paragraph (3) to conduct proceedings concerning any license or regulation which would duplicate proceedings conducted by the Commission. [283] In adopting requirements pursuant to paragraph (2) of this subsection with respect to sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in section 11e.(2), the State may adopt alternatives (including, where appropriate, site-specific alternatives) to the requirements adopted and enforced by the Commission for the same purpose if, after notice and opportunity for public hearing, the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275. Such alternative State requirements may take into account local or regional conditions, including geology, topography, hydrology and meteorology.[284]

271 - Public Law 86-373 (73 Stat. 688) (1959), sec. 1, added sec. 274.

272 - Public Law 95-604 (92 Stat. 3036) (1978), sec. 204(a), amended sec. 274(b)(1) by adding “as defined in section 11e. (1)” after the words “byproduct materials.”

273 - Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(a),, renumbered paragraphs (2) and (3) as paragraphs (3) and (4), and added a new paragraph (2).

274 - Public Law 102-486 (106 Stat. 2944), Oct. 24, 1992.

275 - Public Law 95-604 (92 Stat. 3038) (1978), sec. 204(f), added a new sentence after paragraph (4).

276 - Public Law 95-604 (92 Stat. 3037) (1978), sec. 904(b), amended sec. 274(d)(2) by inserting the words “in accordance with the requirements of subsection o, and in all other respects” before the word “compatible.”

277 - Public Law 96-295 (94 Stat. 787) (1980), sec. 205, inserted “(1)” after j.

278 - Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(d)(1), amended sec. 274j by adding the words “all or part of” after “suspend.”

279 - Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(d)(2), amended sec. 274j by inserting “(1)” after “finds that.”

280 - Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(d)(3), amended sec. 274j by adding at the end before the period :or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

281 - Public Law 96-295 (94 Stat. 787) (1980), sec. 205 added new subsec. j. (2).

282 - Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(c), added last sentence to sec. 274n.

283 - Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(e), added a new subsec. o.

284 - Public Law 97-415 (96 Stat. 2067) (1983), sec. 19 added this paragraph.